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SERVICE DATE - APRIL 2, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33995

SF&L RAILWAY, INC.–ACQUISITION AND OPERATION EXEMPTION–TOLEDO  
PEORIA AND WESTERN RAILWAY CORPORATION BETWEEN LA HARPE AND  
PEORIA, IL

STB Finance Docket No. 33996

KERN W. SCHUMACHER AND MORRIS H. KULMER–CONTINUANCE IN CONTROL  
EXEMPTION–SF&L RAILWAY, INC.<sup>1</sup>

Decided: April 1, 2003

In a decision served on February 6, 2003, we denied a petition, filed by SF&L Railway, Inc. (SF&L), and its owners, Messrs. Kern W. Schumacher and Morris H. Kulmer (collectively, Petitioners), to stay our January 31, 2003 decision, which ordered SF&L to reconvey to Toledo, Peoria and Western Railway Corporation (TP&W) the interest SF&L had acquired in the La Harpe Line (or Line)<sup>2</sup> and TP&W to refund to SF&L the Line's original purchase price plus interest, by February 10, 2003. We also directed Western Illinois Railway Company (Western Illinois), a noncarrier controlled by RailAmerica, Inc. (RailAmerica), not to exercise the authority issued in Western Illinois Railway Company Acquisition Exemption–Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 34282, to acquire the Line's assets following reconveyance to

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<sup>1</sup> These proceedings are not consolidated; they are being considered together for administrative convenience.

<sup>2</sup> SF&L had acquired the operating easement over, and the rail, ties, and certain improvements on, the Line, a 71.5-mile segment of rail line between milepost 194.5 at La Harpe and milepost 123.0 at Peoria, IL, under the exemption invoked in STB Finance Docket No. 33995. That exemption was revoked in a decision served on October 17, 2002, and reopening was denied in the January 31, 2003 decision.

TP&W<sup>3</sup> and ordered TP&W not to transfer any portion of the reconveyed Line while judicial review is pending unless authorized by us (Alienation Conditions).

In a letter filed on February 11, 2003, Mr. Kulmer states that Petitioners have withdrawn with prejudice their petitions for judicial review and motion to stay the January 31, 2003 decision. He states that the La Harpe Line was reconveyed to TP&W and requests that the Alienation Conditions be vacated, asserting that Petitioners have no other claims against TP&W. Keokuk Junction Railway Co. (KJRY), and the United Transportation Union-Illinois Legislative Board jointly with McDonough County and the City of Macomb, IL (UTU-IL parties), filed letters in opposition to, and TP&W filed a response in support of, the vacation request. KJRY also filed a letter replying to TP&W.

In its response, TP&W confirms that it has entered into a settlement agreement with SF&L and that, pursuant to that agreement, SF&L reconveyed the La Harpe Line to TP&W on February 10, 2003, and Petitioners are in the process of having their petitions for judicial review of the January 31, 2003 decision dismissed by the court. (TP&W also states that the embargo of the La Harpe Line SF&L imposed on October 18, 2002, has ended and rates were published on February 14, 2003.) In fact, on March 7, 2003, the court issued an order dismissing the petitions for judicial review.

TP&W claims that Western Illinois was created in November 2002 to facilitate an earlier settlement agreement TP&W was negotiating with SF&L but that this earlier agreement has been discarded and Western Illinois will be dissolved. In view of this and the applicability of the Interstate Commerce Act to any future effort to abandon, sell, lease, or otherwise alienate the Line, TP&W contends that the prohibition on its conveying the Line without Board approval pending judicial review is no longer needed and should be vacated.<sup>4</sup> TP&W fears that retaining this condition could complicate future efforts to convey the Line.

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<sup>3</sup> A related notice of exemption was issued in Rail America, Inc., Et Al.—Corporate Family Reorganization Exemption—Western Illinois Railway Company, STB Finance Docket No. 34283, for RailAmerica to continue in control of Western Illinois once it became a rail carrier. Both notices of exemption were served and published at 67 FR 78039-41 on December 20, 2002.

<sup>4</sup> Because the La Harpe Line will not be transferred to Western Illinois, TP&W also requests that the motion Western Illinois and RailAmerica filed in STB Finance Docket Nos. 34282 and 34283 on November 26, 2002, requesting that the exemptions issued in those proceedings be dismissed for lack of Board jurisdiction, be dismissed. The request is being granted in a decision in STB Finance Docket Nos. 34282 and 34283 served today, and we are also vacating the exemptions issued in those proceedings.

KJRY questions TP&W's motives and the seriousness of its intent to operate the La Harpe Line, and it submits that the terms of the SF&L/TP&W settlement are unknown. KJRY argues that the Alienation Conditions should be retained until TP&W demonstrates that its settlement agreement with SF&L will not create additional problems and that its plans for the Line are consistent with our jurisdiction. UTU-IL parties oppose dismissing the Alienation Conditions, arguing that not all of the interested parties are privy to the SF&L/TP&W settlement agreement.

The Alienation Conditions were intended to ensure that the La Harpe Line would be available to cover monetary claims in the event Petitioners succeeded on judicial review. By their own terms, the Alienation Conditions were to apply only while judicial review was pending. Judicial review has now terminated, the Alienation Conditions are no longer applicable, and indeed Western Illinois is being dissolved. Nevertheless, we will grant the vacation request to remove any uncertainty.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Alienation Conditions, imposed in the February 6, 2003 stay decision in this proceeding, are vacated.
2. This decision is effective on April 2, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams  
Secretary